

HOUSE BILL NO. 167

INTRODUCED BY C. SCHRUMPF

BY REQUEST OF THE SECRETARY OF STATE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PUBLIC RECORDS MANAGEMENT LAWS; REVISING THE DEFINITION OF "PUBLIC RECORDS" WITH RESPECT TO THE RETENTION AND STORAGE OF STATE AND LOCAL GOVERNMENT MATERIALS; AUTHORIZING THE STORAGE OF PERMANENT PUBLIC RECORDS AT LOCATIONS OTHER THAN THE STATE ARCHIVES OR STATE RECORDS CENTER; REQUIRING EACH STATE AGENCY TO DESIGNATE AN AGENCY RECORDS CUSTODIAN; AND AMENDING SECTIONS 2-6-202, 2-6-206, 2-6-211, 2-6-213, AND 2-6-401, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-6-202, MCA, is amended to read:

"2-6-202. Definitions. As used in this part, the following definitions apply:

(1) (a) "Public records" includes:

(i) any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including ~~all~~ copies of the record required by law to be kept as part of the official record, regardless of physical form or characteristics, that:

(A) has been made or received by a state agency in connection with to document the transaction of official business;

(B) is a public writing of a state agency pursuant to 2-6-101(2)(a); and preserved for informational value or as evidence of a transaction

(C) is designated by the state records committee for retention pursuant to this part; and

(ii) all other records or documents required by law to be filed with or kept by any agency of the state of Montana.

(b) The term includes electronic mail sent or received in connection with the transaction of official business.

(c) The term does not include any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other type of document that is for reference purposes only, a

1 preliminary draft, a telephone messaging slip, a routing slip, part of a stock of publications or of preprinted forms,
 2 or a superseded publication.

3 (2) "State records committee" or "committee" means the state records committee provided for in
 4 2-15-1013."

5
 6 **Section 2.** Section 2-6-206, MCA, is amended to read:

7 **"2-6-206. Protection and storage of essential records.** (1) In order to provide for the continuity and
 8 preservation of civil government, each elected and appointed officer of the executive branch shall designate
 9 certain public records as essential records needed for an emergency or for the reestablishment of normal
 10 operations after ~~any such~~ the emergency. A list of ~~such~~ essential records ~~shall~~ must be forwarded to the
 11 secretary of state. The list ~~shall~~ must be reviewed from time to time by the elected or appointed officers to ~~insure~~
 12 ensure its accuracy. Any changes or revisions ~~shall~~ must be forwarded to the secretary of state.

13 (2) Each elected and appointed officer of state government shall ~~insure~~ ensure that the security of
 14 essential records is accomplished by the most economical means possible. Protection and storage of essential
 15 records may be by vaulting, planned or natural dispersal of copies, storage in the state archives or in an
 16 alternative location provided pursuant to 2-6-211(2), or any other method approved by the secretary of state.

17 (3) Reproductions of essential records may be by photocopy, magnetic tape, microfilm, or other
 18 methods approved by the secretary of state."

19
 20 **Section 3.** Section 2-6-211, MCA, is amended to read:

21 **"2-6-211. Transfer and storage of public records.** (1) All public records not required in the current
 22 operation of the office where they are made or kept and all records of each agency, commission, committee,
 23 or any other activity of the executive branch of state government ~~which that~~ may be abolished or discontinued
 24 ~~shall~~ must be, in accordance with approved records retention schedules, either transferred to the state records
 25 center or transferred to the custody of the state archives if ~~such the~~ records are considered to have permanent
 26 administrative or historical value.

27 (2) Subject to approval by the secretary of state pursuant to 2-6-206, the state records center and the
 28 state archives may store transferred permanent public records in locations other than in the buildings occupied
 29 by the state records center or the state archives when it is in the best interests of the state.

30 ~~(2)(3)~~ When records are transferred to the state records center, the transferring agency ~~so doing loses~~

1 ~~none of~~ does not lose its rights of control and access. The state records center is only a custodian of the agency
 2 records, and access ~~will is~~ only ~~be~~ by agency approval. Agency records for which the state records center acts
 3 as custodian may not be subpoenaed from the state records center but must be subpoenaed from the agency
 4 to which the records belong. Fees may be charged to cover the cost of records storage and servicing.

5 ~~(3)~~(4) If an agency does not wish to transfer records as provided in an approved retention schedule,
 6 the agency shall, within 30 days, notify the secretary of state and request a change in the schedule."
 7

8 **Section 4.** Section 2-6-213, MCA, is amended to read:

9 **"2-6-213. Agency responsibilities and transfer schedules.** Each executive branch agency of state
 10 government shall administer its records management function and shall:

11 (1) coordinate all aspects of the agency records management function;

12 (2) manage the inventorying of all public records within the agency for disposition, scheduling, and
 13 transfer action in accordance with procedures prescribed by the secretary of state and the state records
 14 committee;

15 (3) analyze records inventory data, examine and compare divisional or unit inventories for duplication
 16 of records, and recommend to the secretary of state and the state records committee minimal retentions for all
 17 copies of public records within the agency;

18 (4) approve all records disposal requests ~~which~~ that are submitted by the agency to the state records
 19 committee; ~~and~~

20 (5) review established records retention schedules to ~~insure~~ ensure that they are complete and current;
 21 and

22 (6) officially designate an agency records custodian to manage the functions provided for in this
 23 section."
 24

25 **Section 5.** Section 2-6-401, MCA, is amended to read:

26 **"2-6-401. Definitions.** For the purposes of this part, the following definitions apply:

27 (1) "Local government" means:

28 (a) any city, town, county, consolidated city-county, or school district; and

29 (b) any subdivision of an entity named in subsection (1)(a).

30 (2) (a) "Public records" includes:

